IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1795 OF 2006

Manoj Ramesh Mehta .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.A.P.Mundargi, Senior Advocate with
Mr.A.J.Shekhar & Co. for applicant
Mr.P.A.Pol, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 23rd January 2007.

ORAL JUDGEMENT:-

. Applicant is arrested by Bund Garden Police Station in connection with C.R.No.135 of 2002 for offences punishable under section 120(B), 255, 34, 109 of IPC read with 3(1)(ii), 3(2), 3(4), 3(5) and 4 of Maharashtra Control of Organised Crimes Act (MCOCA for short). The applicant is arrested on 11th June 2003. He applied before the Special Judge for bail.

Needless to state that investigation in the said C.R. culminated in Special Case No.2 of 2003 before the Special Judge, Maharashtra Control of Organised Crime Act, 1999 (MCOCA), Pune. The applicant's (Accused No.42) application for bail was numbered as Exh.1215 and placed before the Special Judge. After hearing submissions on behalf of applicant's Advocate so also that of the prosecution, by his order dated 10th January 2006 he dismissed the same.

2. This is how the present application is filed.

3. Mr.Mundargi, learned Senior Counsel appearing in support of this application has contended that taking all allegations against the applicant as true, the role of the applicant in the crime is subsidiary and peripheral in nature. He has not been accused of dealing with fake stamps at all. There is no accusation of the

applicant being involved in printing, manufacturing or disposing of the same. Therefore, Section 3(2) of MCOCA is not attracted. Mr.Mundargi has taken me through para 26 of the charge sheet and contended that the applicant and the prime accused Telgi came in contact with each other in connection with their activities of import and export of spices and pulses. One company by name Metro Corporation was set up by prime accused Telgi, which was involved in import and export of pulses through State Trading Corporation. The applicant has helped and assisted in booking the consignments which are to be routed through S.T.C. There is no role played by him in the fake stamp scam. In any event, at the most he could be said to be a facilitator. In such circumstances, applicant deserves to be enlarged on bail.

4. Mr.Mundargi has then emphasised the fact that a stringent enactment like MCOCA has no

provision for periodical review of cases filed thereunder. In other words, his submission is that there is no provision whereby a special case filed under the MCOCA could be reviewed periodically and qua each accused.

5. He submits that the special case is pending since 2003. There are about 800 witnesses who are going to be examined by the prosecution. Applicant is in custody from 11th June 2003 till date. Thus, even if ultimately he is convicted and sentenced for his alleged role in the crime that would not attract an extreme punishment. Hence, it is quite likely that he may be sentenced for the period which he is presently undergone in custody. In such circumstances and when there is no likelihood of the trial commencing in near future, applicant deserves to be enlarged on bail.

6. Mr.Mundargi has emphasised the mandate of

Article 21 and contended that presumption of innocence is human right. It is part of the mandate of Article 21 of Constitution. Nobody can be detained at this stage as if he is convicted. The difference between a person accused of a crime and being convicted thereof has to be maintained. That distinction is the very basis of the applicant being enlarged on bail. In these circumstances and considering that several accused in the special case are enlarged on bail by the Supreme Court, this is a fit case where the applicant be enlarged on bail with such conditions as this Court deems fit and proper.

7. On the other hand Mr.Thakare appearing for C.B.I. submits that it is false to contend that the present applicant has not committed any offence punishable under the MCOCA or is not prima facie guilty of commission thereof. In other words his submission is that the applicant

is guilty of offences alleged against him. He submits that the prime accused Telgi (Accused No.23) had established a complete machinery whereunder Fake revenue stamps were manufactured, printed, circulated and distributed. The enormity of the crime is such that during the course of the dealings and transactions, the prime accused was assisted by the other accused including public servants. He submits that the present applicant has a long standing association with Telgi.

8. Mr.Thakare disputes the contention that the present applicant had come in contact with Prime Accused only during the course of the so called business dealings. He submits that there were no independent business dealings much less as projected by Mr.Mundargi. He submits that the charge sheet would reveal that prime accused set up certain companies and firms and under the garb of some transactions what was being done was to

transfer monies from several bank accounts to the prime accused. The present case is where the applicant had made some sort of deal for Import of pulses. However, on the own showing of the prime accused and the applicant, said deal was cancelled. The State Trading Corporation was informed accordingly. S.T.C., therefore, did not pursue the import of spices/pulses and other goods. Once the money was parked with the applicant - accused such deals were cancelled. There is prima facie strong evidence to show that the applicant is a member of a crime syndicate of the prime accused. He has actively participated in their activities which were per se unlawful. Therefore, he has been charged with commission of offences punishable under penal laws mentioned above.

9. He submits that MCOCA is clearly attracted in this case. Mr.Thakare has taken me through the charge sheet, portions of which have

been compiled for perusal of this Court. He submits that the intent and knowledge of the activities is clearly there. The telephone conversation which has been relied upon must be seen in that context. Mr.Thakare has invited my attention to portions of the charge sheet where there is reference to Anil Gote and Tabrej Telgi. He submits that prima facie involvement, therefore, is admitted. Mr.Thakare has laid great emphasis on the fact that the applicant was involved in meeting public servants on behalf of prime accused and handing over monies as and by way of bribes in return of favours. In all acts of the prime accused, the applicant was major link. Present applicant at the instance of prime accused, resided at Pune. He checked in Hotel Pride International. It is at this place where a sum of Rs.5 lakhs was handed in to one of the persons named in the charge sheet. That is nothing but part of continuing unlawful activity of the organised crime syndicate. If the

applicant is innocent or has absolutely no knowledge of the activities of Telgi pertaining to fake stamp papers then, there is no occasion for him to have offered his services for payment of some bribes. The investigations would indicate that the prime accused was posted with several developments by this applicant. Therefore, the incident referred to in the charge sheet ought not to be taken in isolation at this prima facie stage. There is a chain which would complete the link and point a finger to the applicant as well. In such circumstances, according to Mr.Thakare, Section 21(4)(B) is attracted and the P.P. is strongly opposing the bail. There are reasonable grounds for believing that the applicant is guilty of offences punishable under this Act.

10. Mr.Thakare submits that the materials need not be scanned and scrutinised in great details. The evidentiary value of the same also

cannot be gone into. In such circumstances, there are strong grounds for the aforesaid reasonable belief.

11. He submits that the mandate of Section 21(4)(B) is in no way diluted or affected by the pronouncement of Supreme Court in the case of Shahin (supra). He submits that the Supreme Court had granted bail to co-accused in this case so also to other accused who were guilty of commission of offences under the POTA, TADA etc. by invoking its constitutional powers and that too flowing from Article 142 of Constitution of India. These orders are rendered in the peculiar facts of those cases. They should be restricted to the Applicants before the Supreme Court and cannot be taken as precedents. There is no principle of law laid down which has to be followed. On the other hand, even in R.S. Sharma's case (supra), the Supreme Court has adverted to section 21(4)(B) of MCOCA and has

made clear observations regarding the mandate of the same and held that it needs to be followed. There is no automatic bail. In such circumstances, other decisions must be seen in the typical, factual backdrop and should not be applied to this case.

12. For properly appreciating rival contentions, some of the provisions of MCOCA and the object and purpose of enacting the same needs to be referred to. In this context, the Supreme Court in the case of Ranjitsing B.Sharma v. State of Maharashtra reported in 2005(2) Bom.C.R.(Cri.)567 has observed thus:-

> "30: The interpretation clause as regard the expression ‘abet’ does not refer to the definition of abetment as contained in section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense

with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any

manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr.Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would

amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas section 3(2) having regard to the definition of the term ‘abet’ refers directly to commission of an offence or assisting in any manner an organised crime syndicate, section 24 postulates a situation where a public servant renders any help or support both before or after the commission of an offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act.

"31: Interpretation clauses contained in section 2(d), 2(e) and 2(f) are interrelated. An ‘organised crime syndicate’ refers to an ‘organised crime’

which in turn refers to ‘continuing unlawful activity.’ As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in section 2(e) should be read "*ejusdem generis*"/ "*noscitur-a-sociis*" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word ‘violence’ has been used only in section 146 and 153-A of the Indian Penal Code. The word ‘intimidation’ alone has not been used therein but only section 506 occurring in Chapter XXII thereof refers to ‘criminal intimidation.’ The word ‘coercion’ finds place only in the Contract Act. If the words ‘unlawful means’ is to be widely construed as including any or other unlawful means, having regard to the provisions contained in sections 400, 401

and 413 of the IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which *prima facie,* does not appear to have been intended by the parliament.

"32: The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and

other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated hereinbefore only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA.

"35: Sub-section (2) of section 3 *inter alia* provides for facilitating conspiracy or abetting or commission of a crime by a person knowingly or any act preparatory to organised crime.

"36: The expression ‘conspiracy’ is not a term of art. It has a definite connotation. It must be read having regard to the legal concept which is now well-settled having regard to several

decisions of this Court in (*Kehar Singh and others v. State (Delhi Admn.),* A.I.R. 1988 S.C. 1883, (*State of Karnataka v. L.Muniswamy and others),* A.I.R. 1977 S.C.1489 and *(P.K.Narayanan v. State of Kerala)* 1995(1) S.C.C.142.

"54: Section 21(4)(B) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of section 24 of the Act, the Court is prohibited to enlarge him on bail. Each case, therefore must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must

be judged objectively. Only because some allegations have been made against a high ranking officer, which cannot be brushed aside, may not be itself be sufficient to continue to keep him behind the bars although on an objective consideration the Court may come to the conclusion that the evidences against him are not such as would lead to his conviction. In case of circumstantial evidence like the present one, not only culpability or *mens rea* of the accused should be prima facie established, the Court must also consider the question as to whether the circumstantial evidence is such whereby all the links in the chain are complete.

"55: The wording of section 21(4)(B), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for

bail has not committed an offence under the Act. If such a construction is placed, the Court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgement of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4)(B) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgement of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not

any other offence. Since it is difficult to predict the future conduct of an accused, the Court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

"56: It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail."

13. Analysing the offences thereunder, the Supreme Court has observed that the word "Abet"

as defined in the Act in Section 2(a) refers to the "organised crime syndicate". That term is defined in Section 2(f) to mean a group of two or more persons, who, acting either singly or collectively, as a syndicate or gang indulged in activities of an organised crime. The term "organised crime" is defined to mean any continuing unlawful activity undertaken as referred to in the definition either as a member of an organised crime syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. The word continuing unlawful activity in short can be said to be an activity prohibited by law for the time being in force but the same is also carefully worded.

14. In the present case, a perusal of the

charge sheet insofar as it is relevant for the purposes of present application, discloses that the prime accused had floated a firm by name Metro Corporation at Kemps Corner, Mumbai in 1993-94. He opened a Bank account with the then Bank of Madurai being A/c.No.17240. Cash amount of Rs.8,33,000/- was deposited in this account. The present applicant, as a co-conspirator and member of organised crime syndicate so also as part of criminal conspiracy issued cheques to the tune of Rs.19,99,500/- which were credited to the above bank account. There was no ostensible transaction entered into by the present applicant with the prime accused. Earlier charge sheet mentions that the prime accused had established another firm Metro Exports to deal in export and import of dye-stuff. He opened an account with Uco Bank Colaba. There also a total amount of Rs.48 lakhs and odd was deposited. All this was done by him to show that he has some legitimate business dealings. It has been demonstrated

prima facie that during the course of counter-feiting Government stamps and stamp papers, the prime accused established close contacts with police officials. It is alleged that there are several instances of money laundering inasmuch as amounts credited in several accounts including that pertaining to present applicant consisted of amounts which were proceeds of the sale of fake stamps and stamp papers. This amount was later on utilised for the purpose of carrying on another illegal business i.e. Kerosene business which is being investigated separately by C.B.I. Applicant is a permanent income tax payee. His accounts were utilised for money laundering, from which amounts he utilised the DD obtained for import of pulses and other materials purchased from S.T.C., a Govt. of India undertaking. Once the accounts were seized and study thereof revealed that a sizable amount of money was diverted to bank accounts for import of Nafta, which later on was

used for clandestine business, the charge sheet refers to the role of accused No.45, Anil Gote. As far as the activity of seeking protection and immunity from legal punishment is concerned, in the charge sheet it is alleged thus:-

> "64. While continuing these unlawful activities, it was also necessary to ensure that the Organised Crime Syndicate was given the necessary protection and immunity from legal punishment and with that objective in mind AKL Telgi (A-23) developed contacts with politicians and Public Servants and subverted them and went to the extent of sharing the booty from out of the ill-gotten gains of the Organished Crime Syndicate. During the period that AKL Telgi (A-23) was in Central Prison, Bangalore the present case came to be detected and registered, despite having made initial attempts from

the Central Prison, Bangalore through the members of his Organised Crime Syndicate to sabotage the investigation, which is evident by the fact that Manoj Ramesh Mehta (A-43) was camping in Pune in Hotel Pride on 7th June 2002 and AKL Telgi (A-23) had sent Rs.5 lacs through Tabrez Ahmed Abdul Rahim Telgi (A-64) to Manoj Ramesh Mehta (A-43), who was the mediator and who had even on previous occasions acted as such. Though, the case came to be registered on 7th June 2002 with a view to sabotage the investigation an officer closely associated with the investigation viz., ACP Mohd. Chand Mulani (A-61) was subverted through Abdul Rashid S. Kulkarni (A-49), and was paid an amount of Rs.15 lakhs as illegal gratification. Similarly, huge amounts were paid to scuttle the investigation in Mumbai cases against the members of the

Organised Crime Syndicate through Dilip P. Kamath (A-44) as elaborated in this charge sheet. Also, in a case registered in the year 1999 at PS Meera Road, Vide C.R.No.274 of 1999 an amount of Rs.50,000/- was paid through Pratap Kakade (since deceased) to subvert the police officers and scuttle the investigation and indeed, though the investigating team could discover the printing press from where the counterfeit Govt.stamps and stamps papers were being printed did not take any measures to seize or seal the press. Similarly, on 20th may 2002 an amount of Rs.15 lakhs was arranged to be paid through Kadarsha Mohd. Singoti (A-8) by AKL Telgi (A-23) to Vashistha Rambhau Andhale (A-55) for ensuring that no legal action whatsoever is initiated against the members of the Organised Crime Syndicate, who had in

fact been found with counterfeit Govt.Stamps and stamp papers."

15. My attention is also invited by Mr.Thakare to various statements recorded during the course of investigation and to the report of preliminary investigation in connection with the subject C.R. He has also invited my attention to the order passed by the Special Judge dated 8th October 2004 with regard to the Polygraph test of the present applicant. The Polygraph test and its report are also forming part of the documents. From this it is tried to be demonstrated by the applicant that he was working as a commission agent only with regard to the dealings in pulses and spices. It is also brought to my notice by Mr.Thakare that the role of the applicant is that of a middle man or a mediator in several dealings and transactions.

16. Even the learned Special Judge has

referred to the material collected during investigation. He has made reference to the money transactions between the applicant and the prime accused. He has referred to the prosecution case that these transactions were shown apparently during the course of import of pulses through S.T.C. However, there is reason to believe that they are infact money laundering operations carried out on behalf of organised crime syndicate. The Agent normally does not accept huge amounts for obtaining D.D. or pay order on behalf of any customer. He is interested only in his commission. However, the applicant received huge amounts from prime accused. They were in relation to procurement of D.D. or pay orders which were later on cancelled. However, the amounts were retained in the bank account of applicant accused. If there was a dealing in spices/pulses and import through S.T.C. or monies were paid for obtaining/purchasing D.Ds. or pay orders, then,

in normal circumstances, once the deal is cancelled, such monies are bound to be returned after deducting usual commission and other charges. That they were not so returned but continued to remain in the bank account of present applicant, is demonstrated by extracts of the concerned accounts. Computer print outs of money transactions which have been seized demonstrate extent of the same. As far as evidentiary value and admissibility of such materials and documents, the trial court has rightly observed that this is not a stage to do so.

17. Once the printing of fake stamps, their distribution and sale, prima facie is an organised crime and laundering of money generated through sale of fake stamps amounts to committing, assisting and abetting continuance of such activity, then, prima facie, the applicant is guilty of commission of an offence under

MCOCA. There is prima facie material in the form of documents and deposits of monies in the bank account. It is not as if the applicant can be said to be totally ignorant of the dealings of the prime accused. The business dealing cannot be seen de hors the other aspects of crime, at this stage itself. There is reason to believe that the applicant was familiar with the activities, he knew the prime accused. He had continuous interaction with him and his crime syndicate. On behalf of the crime syndicate several activities were undertaken by the applicant including accepting monies for onward payment to certain public officials and public servants. That is evidenced, prima facie by the telephonic conversation extracts. Therefore, the prima facie conclusion that the present accused was member of organised crime syndicate headed by the prime accused and well aware of the continuing unlawful activities of the said syndicate cannot be said to be erroneous and

based on no materials.

18. Learned Special Judge has observed that the applicant sought bail on two occasions earlier. The subject bail application was the third one. All three applications have been rejected. The self-same contents are placed before me. Once, the earlier bail applications have been rejected on merits and in the present one also, a reference is made to all prima facie materials, then, in my view, it would not be proper to grant bail on merits. More so, when I have independently satisfied myself with regard to the mandate of section 21(4)(B) of MCOCA.

19. It is in these circumstances that I must consider the alternate contention of Mr.Mundargi that for the acts which have been attributed to the applicant and his role in the crime, at the most he would be punishable with a sentence of 5 years and with fine. In some case, namely, the

offence punishable under section 3(5) the sentence would be 3 years.

20. The contention, therefore, is that the applicant has been arrested in 2003 and has spent considerable time behind bars. He is an under-trial. That aspect has bearing on the conclusion that the Court will record whilst satisfying itself about satisfaction of the mandate under section 21(4)(B) of MCOCA. That should also be borne in mind by me. Once, the number of witnesses is about 800 and the accused has spent three years in jail, then, considering the role attributed to him, he must be enlarged on bail is the effective submission.

21. It is not possible to accede to this submission for more than one reason. Section 21(4)(B) speaks of satisfaction of the Court and existence of reasonable grounds for believing that the applicant/person accused is not guilty

of such offence and that he has not likely to commit any offences while on bail. The word "such offence" is used in the context of the accusations and the offences punishable under MCOCA. It does not make any reference to the ultimate punishment. The punishment which will be awarded under the aforesaid substantive provisions is minimum five years and three years and maximum being what is prescribed including imprisonment for life. As to what punishment would be awarded for the offences, if proved, is something which will be decided at an appropriate stage. As at present, it is not proper to hold that the acts attributed to the applicant being such, at the most, he would invite punishment of 3 or 5 years. That is a matter of guess work which is impermissible. More so, when prima facie case is made out of the applicant being guilty of offences as punishable under the Act and more particularly section 3 thereof. As contended by Mr.Thakare and in my view, rightly,

the Supreme Court has taken this aspect into consideration while enlarging the applicant accused before it on bail. However, neither any general rule is laid down nor a principal of law pronounced in the decision relied upon by Mr.Mundargi. Mr.Thakare is right in contending that the mandate of section 21(4)(B) is not in any manner diluted by the decisions rendered either in R.S.Sharma's case or subsequent thereto. The orders enlarging applicants before the Supreme Court on bail are in facts peculiar to those applicants and the power exercised by the Supreme Court is constitutional power under Article 142.

22. As to what is the ambit and scope of Article 142 of the Constitution of India is by now well settled. The Supreme Court in a recent decision reported in AIR 2004 SC 2336 (Textile Labour Assocn. v/s. Official Liquidator) observed thus:-

"7: It is next contended that inasmuch as mandamus had been issued by this Court as to priority of claims in the matter of payment that mandamus will prevail over any law. This Court examined the plenary powers of this Court arising under Article 142 of the Constitution of India in Supreme Court Bar Association v. Union of India and another, 1998 (4) SCC 409 and held that 'this Court in exercise of its power under Article 142 cannot ignore any substantive statutory provision dealing with the subject and it is only a residuary power, supplementary and complementary to the powers specifically conferred on this Court by statutes exercisable to do complete justice between the parties wherever it is just and equitable to do so. It is intended

> to prevent any obstruction to the stream of justice.' Though the order of this Court in respect of which review is sought for may be read as having been made pursuant to exercise of powers under Article 142 of the Constitution, still the same will have to be read in the light of the decision of this Court Supreme Court Bar Association v. Union of India and another (supra)."

23. Mr.Mundargi could not seriously dispute that the Supreme Court has enlarged the co-accused on bail under this constitutional power and in facts peculiar to them. Therefore, these decisions/ orders are of no assistance.

24. For self-same reason it is not possible to agree with Mr.Mundargi that no review being permitted of the case under MCOCA periodically, this Court consistent with the mandate of Article

21 should enlarge the applicants on bail by applying the principles in cases under POTA and TADA. Once again absence of review of cases periodically or review powers being conferred, but no effective implementation of the same, are matters which are not germane for deciding bail applications.

24. A review committee is contemplated under the MCOCA for different purposes altegether. That is for authorising interception of wire, telephonic or oral communication. That is not to be equated with the committee for reviewing cases under MCOCA periodically as is contemplated in POTA (now repealed) and TADA. Merely because such a committee is not constituted does not mean that this court can enlarge the applicant on bail by ignoring provisions of MCOCA. Even the mandate of Article 21 of Constitution cannot be applied straight away for granting bail and that too by ignoring section 21(4)(B) of MCOCA. That

people are languishing in jails as under-trials without their trial commencing in near future is a ground for enlarging an accused on bail but whether relief should be granted on such a ground depends upon facts and circumstances of each case. Even for deciding the application of bail under section 437 of Cr.P.C. the Supreme Court in AIR 2004 SC 1866 (Kalyan Chandra Sarkar v/s. Rajesh Ranjan) has observed thus:-

> "14: We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records when the seventh application for grant of bail was allowed by the High Court, the same was challenged before this Court and this

Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Criminal Appeal No.745/2001 dated 25th July, 2001. While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(1) of the Code. This Court also in specific terms held that condition laid down under Section 437(1)(1) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High court has given the

period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during

> the period he was on bail.
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> "21: For the reason stated above, we are of the considered opinion that the High Court was not justified in granting bail to the first respondent on the ground that he has been in custody for a period of 3 1/2 years or that there is no likelihood of the trial being concluded in the near future, without taking into consideration the other factors referred to hereinabove in this judgement of ours."

Hence, merely because there is no likelihood of the trial commencing in near future is no ground to enlarge the accused on bail, in all cases and straight away. The seriousness and gravity of the offences, punishment prescribed in law and other relevant factors, cannot be brushed aside. Therefore, there is no merit in the submission of

Mr.Mundargi that the Supreme Court judgement with regard to review of cases under POTA and TADA should be applied and mandate of Article 21 invoked in this case.

25. Mr.Mundargi places strong reliance upon the decisions of the Supreme Court in the case of (a) Kartarsingh Vs. State of Punjab reported in 1994 3 S.C.C. 569 (b) Supreme Court Legal Aid Committee (Representing under-trial prisoners) Vs. Union of India (1994 6 S.C.C. 731) and (c) Shaheen Welfare Association Vs. Union of India (1996 (2) S.C.C. 616.

After considering these cases and similar other cases, so also noticing the Mandate of Article 21 of the Constitution of India, the Supreme Court in a later decision reported in A.I.R. 2001 S.C. 3810 = 2002 (2) S.C.C. 210 (Narinderjit Singh Sahni Vs. Union of India and Anr, observed that Article 32 and Article 21 of the Constitution of

India was invoked for claiming Writ of Mandamus for releasing the accused, arrested in connection with Criminal case, on bail and dealing with several cases pending against the applicant - accused so also referring to the decisions (supra) the Supreme Court has observed as under:-

> "61. It is not doubt true that this Court earlier on two occasions in Writ Petition (Criminal) No.256/99 and Writ Petition (Criminal) Nos.72-75/2000 has granted the relief that in the event of the arrest of the petitioner in connection with any criminal case in his capacity as Managing Director/Director of the Group of Companies,the arresting officer shall release him on bail on his executing a bond to the satisfaction of the arresting Officer. this order obviously tantamounts to an order, invoking the provisions of Section 438 of

the Code of Criminal Procedure. The Court adopted the aforesaid procedure to find out a solution in the peculiar situation and being of the opinion that even though the accused is able to get orders for bail from different Courts,where cases are pending, but inview of the large number of cases against the accused throughout the country, it has physically not become possible to release the accused from the custody. If an accused facing a charge under sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bonafide one it is difficult to conceive that an accused who is involved in thousands of cases indifferent parts of the country by cheating millions of

countrymen, can be given benefit of the privilege of anticipatory bails as a matter of routine, as was done in the two cases, on the basis of which the present batch of cases have been filed. In the manner in which these white-collared crimes are committed and the extent to which it has pervaded the society at large, we are of the considered opinion that the two cases decided by this Court earlier would not be of universal application and cannot be used as a precedent for availing of the privilege in the nature of an anticipatory bail. The Court itself was conscious of the peculiar situation and, therefore, noticed that the Court is exercising its discretion in the peculiar nature and facts of the cases. We do not agree with the proposition that an accused being involved in large number of criminal

cases indifferent parts of the country, if is not able to release from custody even on getting bail orders in some cases, itself would tantamount of violation of the right of a citizen under Article 21 of the Constitution. The object of Article 21 is to prevent encroachment upon personal liberty by the Executive save in accordance with law, and in conformity with the provisions thereof. It is therefore, imperative that before a person is deprived of his life or personal liberty, the procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in exercise of its Constitutional power, of judicial review,has to decide whether

there in a law authorising such deprivation and whether in the given case, the procedure prescribed by such law is reasonable, fair and just and not arbitrary, whimsical and fanciful. On account of liberal interpretation of the words "life" and "liberty" in Article 21, the said Article has now come to be invoked almost as a residuary right, even to an extent which the founding fathers of the Constitution never dreamt of. In a country like ours, if an accused is alleged to have deceived millions of countrymen, who have invested their entire life's saving in such fictitious and frivolous companies promoted by the accused and when thousands of cases are pending against an accused in different parts of the country, can an accused at all complain of an infraction of Article 21, on the ground that he is not being

able to be released out of jail custody in view of different production warrants issued by different Courts. Issuance of production warrants by the Court and the production of accused in Court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to make a complaint of infraction of his rights under Article 21. In our considered opinion, it would be a misplaced sympathy of the Court on such white-collared accused persons whose acts of commission and omission has ruined a vast majority of poor citizens of this country. Though we agree that in a given case Court may be justified in directing release of the accused, taking a stock of the entire situation in the case. While, therefore, we agree with the submissions of the counsel for the petitioners-accused that

> an accused could maintain a petition under Article 32 but the Court would not be justified in directing the release of such accused under a blanket order like the one which has been relied upon by the counsel for the accused persons and such a course of action would perpetrate gross injustice.

26. In my view, these observations of the Supreme Court in the subsequent decision would clarify the position beyond any doubt. It is not as if mere pendency of case, the trial not commencing in near future that the accused can be enlarged on bail, straightaway by ignoring the relevant factors, including serious and gravity of the crime so also the impact of grant of bail on public interest.

27. For the above reasons, the decisions relied upon by Mr.Mundargi arising out of above

two enactments would not be of any assistance in deciding the present application. The decisions are clearly distinguishable.

28. In the result, once I am satisfied that prima facie case being made out of the applicant being guilty of the offences punishable under section 3 of MCOCA on the basis of materials collected till date, then, bail cannot be granted. Consequently, application fails and it is dismissed.

29. At this stage it would be proper to invite attention of all concerned to the observations of the Supreme Court in the case of Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India, reported in (1994) 6 S.C.C. 731. Although, these observations are made in the context of rights of undertrials who are facing prosecution

for offences punishable under NDPS Act, they are very much relevant for our purpose. This is what the Supreme Court has observed in paras 15 & 17 of this decision:-

> "15. ..... It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which is just, fair and reasonable i.e. a procedure which promotes speedy trial.

See Hussainara Khatoon (IV) Vs. Home Secy. State of Bihar, Raghubir Singh Vs. State of Bihar and Kadra Pahadiya Vs. State of Bihar to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the process of constituting the first two special courts started with the issuance of notifications under Section 36(1) on 4/1/1991 and under section 36(2) on 6/4/1991 almost two years from 29/5/1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision

in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar activity. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is

clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgement. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab. Despite this provision, we have directed as above mainly at he call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as

held by a Constitution Bench of this Court in A.R.Antulay v. R.S.Nayak, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have

felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and,therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be

further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases.

17: We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the

percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc en enlargement on bail on 1-2-1993 in Criminal Application No.3480 of 1992 and B.D. Criminal No.565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer,

preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail."

30. Despite these observations of the Hon’ble Supreme Court being brought to his notice,

learned A.P.P. appearing in this case is unable to give any assurance, except making a statement that he would invite attention of the authorities concerned to the observations of the Supreme Court. Shri Thakare appearing for C.B.I. was unable to throw any further light on this aspect of the matter. Shri Mundargi strenuously urges that large number of witnesses (about 800) are going to be examined and the trial is not likely to commence in near future. I am unable to go into these aspects as all materials in that behalf are not produced by both sides. In any event, for reasons recorded above, the application cannot be granted.

31. Before concluding, I wish to observe that considering the ambit and scope of Article 21 of Constitution of India so also the fact that stringent enactments for curbing Terrorist and Subversive Activities also providing for periodical review, it is for the State to take

appropriate measures or else the guidelines laid down in the aforementioned Supreme Court decisions would be a futile exercise.

(S.C.Dharmadhikari, J)